MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1531

ALBERT JOHNSON, ET AL.,
Petitioners,

vs.

STATE OF MISSISSIPPI, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS

A. F. SUMMER, Attorney General
State of Mississippi

WILLIAM A. ALLAIN
First Assistant Attorney General

ED DAVIS NOBLE, JR.
Special Assistant Attorney General
Attorneys for Respondents

R. L. MERIDETH, INC., 916 Cherry Street, Kansas City, Mo. 64106, 421-2020

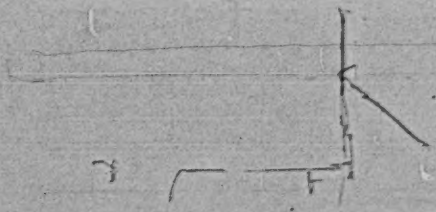

TABLE OF CONTENTS

Opinions Below 1
Jurisdiction 2
Question Presented 2
Statutes Involved 2
Statement of the Case 2
Summary of Argument 4
Argument 5
I. This Case Must Be Placed Within the Strictures of *Peacock* Denying Removal Because No Federal Law Permits the Petitioners to Engage in the Activity for Which They Were Charged and No Federal Statute Confers Immunity from State Prosecution for Such Charges 5
II. 18 U.S.C. §245 Is a Criminal Statute That Does Not Provide for Equal Civil Rights 8
III. Unless the Words of §1443(1) Are to Be Disregarded and the Previous Consistent Decisions of This Court Completely Repudiated, the Answer Must Clearly Be That No Removal Is Authorized in This Case 13
IV. If Any Acts Are Reprehensible in This Cause, It Is Those of the Petitioners Since They Were Arrested Because of Illegal Conduct Rather Than in the Exercise of Any Protected First Amendment Right 14
Conclusion 15
Certificate 16
Appendix A-1 17
Appendix A-2 17
Appendix A-3 22
Appendix A-4 22

Table of Authorities

CASES

City of Greenwood v. *Peacock*, 384 U.S. 808 (1966) 2, 3-4, 5, 7, 8, 14, 15
Commonwealth of Pennsylvania v. *Bradshaw*, W.D. Penn., 1973, 361 F.Supp. 405 12
Cox v. *Louisiana*, 379 U.S. 559 (1965) 14
Dodge v. *Nakai*, D. Ariz., 1968, 298 F.Supp. 17 12
Georgia v. *Rachel*, 384 U.S. 780 (1966) 2, 3, 4, 5, 6, 8
Hamm v. *City of Rock Hill*, 379 U.S. 306 (1964) 6
Hill v. *Commonwealth of Pennsylvania*, 3 Cir. 1971, 439 F.2d 1016, cert. den. 404 U.S. 985 12
Jaso v. *Traczyk*, N.D. Ind., 1973, 367 F.Supp. 434 12
Kentucky v. *Powers*, 201 U.S. 1 (1906) 7
Lovelace v. *Leechburg Area School District*, W.D. Penn., 1970, 310 F.Supp. 579 12
Means v. *Wilson*, D.C. S.D., 1974, 383 F.Supp. 378 12
Mitchum v. *Foster*, 407 U.S. 225 (1972) 15
People of State of New York v. *Horelick*, 2 Cir. 1970, 424 F.2d 697, cert. den. 398 U.S. 939 ..... 12, 14
Perkins v. *Mississippi*, 5 Cir. 1972, 455 F.2d 7, aff. en banc, 470 F.2d 1371 12
State of Tennessee ex rel. Fisher v. *C. C. Manifest of Tennessee, Inc.*, E.D. Tenn., 1973, 362 F.Supp. 759 12
United States v. *Dioguardi*, 2 Cir. 1974, 492 F.2d 70 13
United States v. *Herrod*, 5 Cir. 1974, 499 F.2d 1003 13
United States v. *O'Brien*, 391 U.S. 367 (1968) 14
United States v. *Pacelli*, 2 Cir. 1974, 491 F.2d 1108 13
United States v. *Price*, 8 Cir. 1972, 264 F.2d 1217 12
Williams v. *Tri-County Community Center*, 5 Cir. 1971, 452 F.2d 221 12

STATUTES

Civil Rights Act of 1964—

§201, 78 Stat. 243, 42 U.S.C. 2000(a) 6
§203(c) 6
Title II 6

Civil Rights Act of 1968 (82 Stat. 73)—

18 U.S.C. §245 ..... 2, 3, 4, 8, 11, 12, 13, 15
18 U.S.C. §245(a)(1) 12
18 U.S.C. §245(b) 13

Mississippi Code of 1972—

§97-23-83 ..... 2, 3
§97-23-85 ..... 2, 3

28 U.S.C. §1254(1) 2
28 U.S.C. §1443(1) 2, 3, 4, 5
28 U.S.C. §1447(d) 2
Voting Rights Act of 1965, 42 U.S.C. §1973 7

OTHER AUTHORITIES

Cong.Rec., Vol. 113, Part 17, 90th Cong., 1st Sess., pp. 22678-22680 9-10
S.Rep., No. 721, 90th Cong., 1st Sess., pp. 1838, 1839 10-11

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1531

ALBERT JOHNSON, ET AL.,
Petitioners,

vs.

STATE OF MISSISSIPPI, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit is reported at 488 F.2d 284 and is reproduced in the Petition, Appendix B (pp. 6a-13a). The order of the Court of Appeals denying the Petition for Rehearing and Rehearing En Banc is reported at 491 F.2d 94 and is reproduced in the Petition, Appendix A (pp. 1a-5a). The opinion of the District Court is unreported but appears in the Petition, Appendix D (pp. 15a-25a).

JURISDICTION

The United States Court of Appeals for the Fifth Circuit entered its judgment on January 14, 1974, and denied rehearing or in the alternative rehearing en banc on March 15, 1974. A Petition for Writ of Certiorari was filed April 12, 1974, and was granted on October 21, 1974. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1254(1) and 28 U.S.C. §1447(d).

QUESTION PRESENTED

Whether 18 U.S.C. §245 is a law *providing* for equal civil rights as envisioned by 28 U.S.C. §1443(1) and the teachings of this Court in *Georgia* v. *Rachel*, 384 U.S. 780 (1966) and *City of Greenwood* v. *Peacock*, 384 U.S. 808 (1966) to serve as a foundation for criminal removal.

STATUTES INVOLVED

1. 28 U.S.C. §1443(1) [1964 ed.] (See Appendix A-1).

2. 18 U.S.C. §245 [82 Stat. 73] (See Appendix A-2).

3. §97-23-83, Mississippi Code of 1972 (See Appendix A-3).

4. §97-23-85, Mississippi Code of 1972 (See Appendix A-4).

STATEMENT OF THE CASE

On or about March 25, 1972, a black boycott of local businesses began in Vicksburg, Mississippi, and continued for approximately five weeks. The stated purpose of this campaign was to attain equal employment opportunities

in the privately owned establishments and in the municipal government and its agencies.

The petitioners allege that they were "engaged in picketing and distribution of leaflets" and that these activities are constitutionally protected modes of expression. While it is not disputed that these petitioners may or may not have been engaged in these normally protected activities at one time or another, respondent states that these are not the incidents for which the individuals were charged.

Factual presentation indicates that there had been two separate instances surrounding the arrests of the complaining individuals. The first was marching and/or picketing in the City of Vicksburg. There were no accompanying incidents to necessitate state action. However, the second is of an entirely different posture. The arrests of the petitioners arose from acts of intimidation toward shoppers and/or merchants who were attempting to perform related business activities. The arrests in question occurred on these separate occasions—May 2, May 13 and May 15, 1972. Nearly all arrests were founded upon a breach of the Mississippi Secondary Boycott statute, §97-23-85, Mississippi Code of 1972. However, on May 13, 1972, Albert Johnson was additionally charged upon sworn affidavit pursuant to §97-23-83, Mississippi Code of 1972, of having specifically interfered with and intimidated one James E. Sturgis, a black principal of a high school, for trading with a white merchant.

In an attempt to utilize the removal statute, 28 U.S.C. §1443(1), the petitioners assert the Civil Rights Act of 1968, 18 U.S.C. §245.

Predicated upon the pronouncements of this Court in *Georgia* v. *Rachel*, 384 U.S. 780 (1966) and *Greenwood*

v. *Peacock*, 384 U.S. 808 (1966), the courts below denied the petitioners' request for removal. The district court issued its order of remand January 4, 1973; the Circuit Court of Appeals affirmed, 5 Cir., 1974, 488 F.2d 284, reh. and reh. en banc denied 491 F.2d 94. In doing so, the appellate court rejected the petitioners' argument that 18 U.S.C. §245 is sufficient basis to invoke the federal removal statute.

SUMMARY OF ARGUMENT

This Court is being requested by the petitioners herein to reexamine and perhaps rewrite its landmark decisions on criminal removal, *Georgia* v. *Rachel*, 384 U.S. 780 (1966) and *City of Greenwood* v. *Peacock*, 384 U.S. 808 (1966).

Removal is purely a question of jurisdiction which is authorized by the provisions of 28 U.S.C. §1443(1). To trigger this extraordinary remedy, the petitioners must prove the existence of a specific statutory right providing for equal civil rights stated in terms of racial equality, which one is denied or cannot enforce in the courts of a state. Moreover, the denial must be evidenced primarily, if not exclusively, by a state statute in conflict with a federal statute.

To effect compliance with this exacting criteria, the petitioners place their reliance on 18 U.S.C. §245. Such a foundation will not support their contentions. The statute makes this clear by its express terms. It neither provides nor creates any substantive rights as required by §1443(1); it is solely a criminal statute permitting federal prosecution for forceful interference with a long list of activities.

ARGUMENT

In its original panel decision, the Circuit Court of Appeals succinctly stated the issue now before this Court:

> "The key to removal under §1443(1) is whether there exists a law 'providing for . . . the equal civil rights of citizens.' Unlike all previous cases which have interpreted the phrase and which have focused on whether a particular statute meets the 'equal civil rights' test, the essential inquiry here is whether §245, which clearly deals with equal civil rights, meets the requirement that the law be one providing such rights." 488 F.2d 284, 286.

I.

This Case Must Be Placed Within the Strictures of Peacock Denying Removal Because No Federal Law Permits the Petitioners to Engage in the Activity for Which They Were Charged and No Federal Statute Confers Immunity from State Prosecution from Such Charges.

The teachings of *Georgia* v. *Rachel*, 384 U.S. 780 (1966) and *City of Greenwood* v. *Peacock*, 384 U.S. 808 (1966) foreclose the petitioners from utilizing the remedy of removal in this case because *Albert Johnson* simply does not meet the demands of 28 U.S.C. §1443(1) or the criteria established by these decisions.

After a comprehensive analysis of the history of the civil rights removal statute and its previous decisions construing it, this Court concluded in *Georgia* v. *Rachel*, supra, that decisions up to that time established that in order to come within what is now §1443(1), petitioners must com-

ply with both requirements of that subsection to achieve removal of their criminal prosecutions.

> "They must show both that the right upon which they rely is a 'right under any law providing for . . . equal civil rights' and that they are 'denied or cannot enforce' that right in the courts of Georgia." *Rachel,* 384 U.S. 780, 788.

These limitations were met in *Rachel* by the Court's recognition of two intervening factors: (1) the passage of Congress of the Civil Rights Act of 1964, Section 201, 78 Stat. 243, 42 U.S.C. 2000(a); and (2) their interpretation of that statute in *Hamm* v. *City of Rock Hill,* 379 U.S. 306 (1964). While acknowledging that Public Accommodations legislation was enacted subsequent to the attempted removal, the Court reasoned that the Act entitled all persons to be served in restaurants open to the public. The defendants who had been in such a restaurant were being prosecuted under a Georgia statute making it a misdemeanor to not leave the premises when ordered to do so by the "owner or person in charge." Section 203(c) of the Civil Rights Act prohibits any "attempt to punish" persons for exercising the rights of equality so conferred. This had been interpreted in *Hamm* to prohibit not merely conviction but prosecution. Hence, if defendants could substantiate the allegations in the removal petition that they had been asked to leave for racial reasons, prosecution in the state courts would itself "deny" a right conferred by Title II of the 1964 Civil Rights Act.

Thus, the Court concluded that Congress had accorded a statutory substantive right superseding a crime. With this, removal may be reached provided, however, that it could ultimately be proven that the petitioners had been denied the right of utilizing public accommodations *solely* upon the basis of race.

City of Greenwood v. *Peacock*, 384 U.S. 808 (1966), is another matter.

Illustrating that removal is essentially statutory the Court reached a different conclusion in *Peacock*. There the defendants were charged with obstructing public streets, and various other offenses. The then petitioners alleged their arrests were racially motivated, stemming from their participation in voter registration drives in Mississippi. Despite the enactment of the Voting Rights Act of 1965, 42 U.S.C. §1973, the Court held that this case was to be governed by the previous line of decisions against removal culminating in *Kentucky* v. *Powers*, 201 U.S. 1 (1906), rather than *Rachel*.

In the language of the decision:

> "The present case differs from *Rachel* in two significant respects. First, no federal law confers an absolute right on private citizens—on civil rights advocates, on Negroes, or on anybody else—to obstruct a public street, to contribute to the delinquency of a minor, to drive an automobile without a license or to bite a policeman. Second, no federal law confers immunity from state prosecutions on such charges." *Peacock*, 384 U.S. 808, 826, 827.

In sum, the doctrine announced by the Court was also a limitation on removal.

> "It is *not* enough to support removal under Section 1443(1) to allege or show that the defendant's federal equal civil rights have been illegally and corruptly denied by state administrative officials in advance of trial, that the charges against the defendant are false, or that the defendant is unable to obtain a fair trial in a particular state court. The motives of the officers bringing the charges may be corrupt, but that does

not show that the state trial court will find the defendant guilty if he is innocent, or that in any other manner the defendant will be 'denied or cannot enforce in the courts' of the State any right under a federal law providing for equal civil rights. The civil rights removal statute does not require and does not permit the judges of the federal courts to put their brethren of the state judiciary on trial. Under Section 1443(1), the vindication of the defendant's federal rights is left to the state courts except in the rare situations where it can be clearly predicted by reason of the operation of a pervasive and explicit state or federal law that those rights will inevitably be denied by the very act of bringing the defendant to trial in the state court. Georgia v. Rachel, 384 U.S. 780, 16 L.Ed.2d 925, 86 S.Ct. 1783; Strauder v. West Virginia, 100 U.S. 303, 25 L.Ed. 664." (Emphasis in original) *Peacock*, 384 U.S. 808, 827, 828.

Johnson falls within the strictures of *Peacock*. Quite simply, the remedial statute invoked by these petitioners sub judice to effect removal is inappropriate and inapplicable. By its very title, language and subject matter, 18 U.S.C. §245 is a criminal statute upon which the office of the United States Attorney General is permitted to bring federal charges. In short, the statute creates no rights; it merely provides protection for those in force.

II.

18 U.S.C. §245 Is a Criminal Statute That Does Not Provide for Equal Civil Rights.

Neither Congressional history nor the language of 18 U.S.C. §245 support the petitioners' argument that it is a law providing for equal civil rights in terms of racial equality as required by *Rachel* and *Peacock*. Quite the

contrary, references to this Act substantiate respondents' contention that it is exclusively a criminally prohibitive Act allowing the initiation of federal charges in certain instances.

In his inaugural statement initiating the debate on the original bill, H.R. 2516 entitled, "Penalties for Interference with Civil Rights," Honorable Emanuel Celler, Chairman of the House Judiciary Committee, spoke of the legislative intent as follows:

> Mr. CELLER. Mr. Chairman, today we debate H.R. 2516, as amended, a bill that would establish Federal criminal penalties for forcible interference with civil rights. It contains substantially the same provisions as title V of the Civil Rights Act of 1966 which was approved by the House of Representatives on August 9, 1966. H.R. 2516 is intended to achieve four main objectives:
>
> "First, it would make it a Federal crime for private individuals forcibly to interfere with lawful participation in activities protected by Federal laws, including the 14th amendment, whether or not 'State action' is involved. It would also protect these activities against interference by public officials.
>
> "Second, it would specify the kinds of activities which are protected, thus giving unmistakable warning to lawless persons that if they interfere with any of these activities, they must answer to the Federal Government.
>
> "Third, it would protect civil rights workers, Negroes, and peaceful demonstrators seeking equality.
>
> "Fourth, it would provide a graduated scale of penalties depending upon whether bodily injury or death results from the interference.
>
> * * *

"Section 245(a) and (b) covers reprisals and prohibits attempts to deter others from engaging in the protected activities. For example, the jury would have to find that defendant's purpose was to deter persons from voting or applying for employment or applying for admission to a public school or to punish persons who have done so.

"The statute would prohibit forcible interference by either public officials or private individuals. The bill would prescribe penalties graduated in accordance with the seriousness of the injury inflicted, ranging from misdemeanor penalties to life imprisonment. If a violation of the statute does not result in bodily injury or death, the penalty would be limited to a fine of not more than $1,000 or imprisonment for not more than 1 year, or both. If bodily injury does result, the penalty would be a fine of not more than $10,000 or imprisonment for not more than 10 years, or both. If death results, the penalty would be imprisonment for any term of years or for life.

* * *

"Like all criminal statutes, the purpose of H.R. 2516 is not only to punish, but to deter. I believe this legislation represents an assumption of Federal responsibility in an area which is long overdue. I urge its adoption." (Emphasis added) Cong.Rec., Vol. 113, Part 17, 90th Cong., 1st Sess., pp. 22678-22680.

Subsequently, the Report of the Senate Committee on the Judiciary defined the purpose of this legislation thusly:

"H.R. 2516, as reported, adds a new section 245 to title 18, United States Code, in the form of a criminal statute designed to deter and punish interference by

force or threat of force with activities protected by Federal law or the Constitution and specifically set out in the bill. The purpose of the legislation is to strengthen the capability of the Federal Government to meet the problem of violent interference, for racial or other discriminatory reasons, with a person's free exercise of civil rights. The areas of protected activity are specifically described. They include voting and activities related to voting; enrolling in or attending public schools or public colleges; participating in or enjoying the benefits of services, programs, facilities, or activities of Federal, State or local governments; enjoying employment, union membership, or the services of employment agencies; serving on juries; using vehicles, terminals, or facilities of common carriers; participating in programs or activities receiving Federal assistance, and enjoying the facilities of hotels, restaurants and other public accommodations.

"The statute would punish interference or attempts to interfere, by force or threat of force, with any person because of his race, color, religion or national origin and because such person is or has been engaging or seeking to engage, while acting lawfully, in any of the enumerated activities." S.Rep.No. 721, 90th Cong., 1st Sess., pp. 1838, 1839.

The argument of Albert Johnson, et al., for removal is founded on the Civil Rights Act of 1968, 82 Stat. 73, which was added to Title 18 of the United States Code §245, entitled "Federally Protected Activities." Unlike the statutes on public accommodations and voting rights, the 1968 Act does not in terms confer substantive rights; it is solely a criminal statute permitting federal prosecution for interference with a long list of activities. The circuits are universal in their concurrence with this conclusion.

There is no conflict among them whatever. *Perkins* v. *Mississippi*, 5 Cir. 1972, 455 F.2d 7, aff. en banc, 470 F.2d 1371; *Williams* v. *Tri-County Community Center*, 5 Cir. 1971, 452 F.2d 221, fn. 3; *Hill* v. *Commonwealth of Pennsylvania*, 3 Cir. 1971, 439 F.2d 1016, cert. den. 404 U.S. 985; *People of State of New York* v. *Horelick*, 2 Cir. 1970, 424 F.2d 697, cert. den. 398 U.S. 939.

The opinions arising from district courts are also uniform in this application. *Dodge* v. *Nakai*, D. of Arizona, 1968, 298 F.Supp. 17; *Lovelace* v. *Leechburg Area School District*, W.D. Penn., 1970, 310 F.Supp. 579; *Commonwealth of Pennsylvania* v. *Bradshaw*, W.D. Penn., 1973, 361 F.Supp. 405; *State of Tennessee ex rel. Fisher* v. *C. C. Manifest of Tennessee, Inc.*, E.D. Tenn., 1973, 362 F.Supp. 759; *Jaso* v. *Traczyk*, N.D. Ind., 1973, 367 F.Supp. 434; *Means* v. *Wilson*, D.C. S.D., 1974, 383 F.Supp. 378.

As previously indicated by the Congressional history of this statute, it merely protects one from interference with their participating in federally protected activities; it is criminal in nature and has been held not to create a civil cause of action. The justification for such a holding is strong in view of the restraints placed by Congress on the invocation of 18 U.S.C. §245, which may be invoked by the United States only upon certification in writing by the Attorney General or Deputy Attorney General that a prosecution is justified in the public interest. 18 U.S.C. §245(a)(1). To this end, the statute has been utilized by the Department of Justice on several occasions. In Missouri, an individual was convicted of an assault on a black because of interference with his enjoyment of a government recreation area. *United States* v. *Price*, 8 Cir. 1972, 264 F.2d 1217. The defendant was charged with interference of one's civil right to be a witness in *United States* v. *Pacelli*, 2 Cir. 1974, 491 F.2d 1108; *United*

States v. *Dioguardi*, 2 Cir. 1974, 492 F.2d 70. The defendant was found guilty of violating the civil rights statute in connection with a beating suffered by a black janitor during his arrest in a tavern in *United States* v. *Herrod*, 5 Cir. 1974, 499 F.2d 1003.

Subdivision (b) says that "Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with" five broad categories of persons, several divided into subcategories, shall be subject to fine or imprisonment as there described. At least two of the categories, (1) and (3), taken by themselves would not seem to fit the definition of "equal civil rights" in *Rachel*, to-wit, "any law *providing* for specific civil rights states in terms of racial equality." 384 U.S. 780, 792.

III.

Unless the Words of §1443(1) Are to Be Disregarded and the Previous Consistent Decisions of This Court Completely Repudiated, the Answer Must Clearly Be That No Removal Is Authorized in This Case.

Section 245(b), which the petitioners rely upon in the instant case, explicitly indicates that Congress did not intend to displace the state laws upon which the petitioners were charged. The Senate report, in describing the purpose of the Act, disclaimed any intention to occupy the field or preempt state criminal laws and specifically stated that for one to be under the United States' protection one was required to be acting lawfully. In addition, it is clear that §245 is aimed only at intimidation by "force or threat of force" in the sense of violent activity. It was not intended to displace the ordered functioning of

state legal process, no matter the motivation of those instituting the prosecution. *People of the State of New York* v. *Horelick*, 2 Cir. 1970, 424 F.2d 697, 702-703. Any other view would work the wholesale dislocation of the relationship between federal and state courts in the administration of criminal law, which was warned against in *Peacock*, 384 U.S. 808, 832-835.

IV.

If Any Acts Are Reprehensible in This Cause, It is Those of the Petitioners Since They Were Arrested Because of Illegal Conduct Rather Than in the Exercise of Any Protected First Amendment Right.

The petitioners in this appeal were not arrested as a result of their exercise of any First Amendment right of expression, i.e., picketing and marching. The legal proceedings in question were initiated only *after* it was discovered that certain individuals were in fact engaged in ancillary, unprotected activity to perpetuate an illegal boycott. In other words, the respondent believes that the reason for probable cause and the subsequent arrests of these individuals was unprotected conduct outside the ambit of the First Amendment shield. *United States* v. *O'Brien*, 391 U.S. 367, 376 (1968). The right of peaceful protest does not mean that everyone with opinions or beliefs may express them in any manner, at any time and at any place. *Cox* v. *Louisiana*, 379 U.S. 559 (1965). In effect, such a posture places the actions of the petitioners squarely within the admonition of the Supreme Court in *Peacock*, 384 U.S. 808, 826, 827.

Therefore, when stripped of all else, the petitioners are left with nothing more than First Amendment allegations to support their request for removal. This is insuffi-

cient; injunction is more appropriate, *Peacock*, 384 U.S. 808, 825, 829, and the timetable more immediate, *Mitchum* v. *Foster*, 407 U.S. 225 (1972).

CONCLUSION

Upon the facts presented in this case, it may clearly be seen that the exacting criteria for removal has not been met. 18 U.S.C. §245 is, by its very language, criminal in nature; it "provides" no specific civil right stated in terms of racial equality. Removal is not the proper remedy here; a more appropriate avenue would have been to seek injunctive relief.

For the foregoing reasons, the opinion of the Court of Appeals should be affirmed.

Respectfully submitted,

A. F. SUMMER, Attorney General
State of Mississippi

WILLIAM A. ALLAIN
First Assistant Attorney General

ED DAVIS NOBLE, JR.
Special Assistant Attorney General
Attorneys for Respondents

CERTIFICATE

I, Ed Davis Noble, Jr., Special Assistant Attorney General, do hereby certify that I have mailed this date by United States Mail a true copy of the foregoing Brief of Respondents to:

Frank R. Parker, Esq.
Lawyers' Committee for Civil Rights
Under Law
233 North Farish Street
Jackson, Mississippi 39201

J. Harold Flannery, Esq.
Paul R. Dimond, Esq.
Lawyers' Committee for Civil Rights
Under Law
733 15th Street N.W.
Suite 520
Washington, D.C. 20005
Attorneys for Petitioners

James E. Winfield, Esq.
P.O. Box 1448
Vicksburg, Mississippi 39180
Of Counsel

THIS the 10th day of January, 1975.

ED DAVIS NOBLE, JR.

APPENDIX A-1

1443. Civil rights cases.—Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

APPENDIX A-2

245. Federally protected activities.—(a)(1) Nothing in this section shall be construed as indicating an intent on the part of Congress to prevent any State, any possession or Commonwealth of the United States, or the District of Columbia, from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section, nor shall anything in this section be construed as depriving State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State and local law. No prosecution of any offense described in this section shall be undertaken by the United States except upon the certification in writing of the Attorney General or the Deputy Attorney General that in his judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice, which function of certification may not be delegated.

(2) Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.

(b) Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with—

(1) Any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(A) voting or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher, or any legally authorized election official, in any primary, special, or general election;

(B) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States;

(C) applying for or enjoying employment, or any perquisite thereof, by any agency of the United States;

(D) serving, or attending upon any court in connection with possible service, as a grand or petit juror in any court of the United States;

(E) participating in or enjoying the benefits of any program or activity receiving Federal financial assistance; or

(2) any person because of his race, color, religion or national origin and because he is or has been—

(A) enrolling in or attending any public school or public college;

(B) participating in or enjoying any benefit, service, privilege, program, facility or activity provided or administered by any State or subdivision thereof;

(C) applying for or enjoying employment, or any perquisite thereof, by any private employer or any agency of any State or subdivision thereof, or joining or using the services or advantages of any labor organization, hiring hall, or employment agency;

(D) serving, or attending upon any court of any State in connection with possible service, as a grand or petit juror;

(E) traveling in or using any facility of interstate commerce, or using any vehicle, terminal, or facility of any common carrier by motor, rail, water, or air;

(F) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility which serves the public and which is principally engaged in selling food or beverages for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment which serves the public, or of any other establishment which serves the public and (i) which is located within the premises of any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishments, and (ii) which holds itself out as serving patrons of such establishments; or

(3) during or incident to a riot or civil disorder, any person engaged in a business in commerce or affecting

commerce, including, but not limited to, any person engaged in a business which sells or offers for sale to interstate travelers a substantial portion of the articles, commodities, or services which it sells or where a substantial portion of the articles or commodities which it sells or offers for sale have moved in commerce; or

(4) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—

(A) participating, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F); or

(B) affording another person or class of persons opportunity or protection to so participate; or

(5) any citizen because he is or has been, or in order to intimidate such citizien or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate—

shall be fined not more than $1,000, or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than $10,000, or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life. As used in this section, the term "participating lawfully in speech or peaceful assembly" shall not mean the

aiding, abetting, or inciting of other persons to riot or to commit any act of physical violence upon any individual or against any real or personal property in furtherance of a riot. Nothing in subparagraph (2)(F) or (4)(A) of this subsection shall apply to the proprietor of any establishment which provides lodging to transient guests, or to any employee acting on behalf of such proprietor, with respect to the enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of such establishment if such establishment is located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor as his residence.

(c) Nothing in this section shall be construed so as to deter any law enforcement officer from lawfully carrying out the duties of his office; and no law enforcement officer shall be considered to be in violation of this section for lawfully carrying out the duties of his office or lawfully enforcing ordinances and laws of the United States, the District of Columbia, any of the several States, or any political subdivision of a State. For purposes of the preceding sentence, the term "law enforcement officer" means any officer of the United States, the District of Columbia, a State, or political subdivision of a State, who is empowered by law to conduct investigations of, or make arrests because of, offenses against the United States, the District of Columbia, a State, or a political subdivision of a State. (Apr. 11, 1968, P. L. 90-284, Title I, § 101(a), 82 Stat. 73.)

APPENDIX A-3

§ 97-23-83. Threats or coercion to prevent lawful conduct of business.

If any person shall in any manner threaten with bodily harm, intimidate or coerce another person to prevent said person from lawfully trading or carrying on business, including buying or selling, he shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for not more than one (1) year in the county jail or be fined not more than one thousand dollars ($1,000.00) or both.

APPENDIX A-4

§ 97-23-85. Unlawful restraint of trade—boycott—civil liability.

If two (2) or more persons conspire to prevent another person or other persons from trading or doing business with any merchant or other business and as a result of said conspiracy said persons induce or encourage any individual or individuals to cease doing business with any merchant or other person, and when such conspiracy is formed and effectuated because of a reasonable grievance of the conspirators over which the said merchant or place of business boycotted or against which a boycott is attempted has no direct control or no legal authority to correct, or when the conspiracy results from such alleged grievance against the merchant or other person boycotted when no notice of such grievance has been given the

merchant or party boycotted and no reasonable opportunity to correct such alleged grievance has been given such merchant or other person against whom the conspiracy was formed, then each of such persons shall be guilty of the crime of unlawful restraint of trade and shall be fined not more than one thousand dollars ($1,000.00) or imprisoned for not more than two (2) years and in addition each such person shall be liable in civil action for any damages suffered by said merchant or place of business so wrongfully boycotted and also for attorney fees incurred by said merchant or person boycotted in a civil action to recover damages.